

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6128 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

- =====
1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the concerned : NO  
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

-----  
VASANTRAI DHANESHWAR JANI

Versus

DISTRICT PANCHAYAT  
-----

Appearance:

1. Special Civil Application No. 6128 of 1992  
MR PV HATHI for Petitioner  
MR HS MUNSHAW for Respondent No. 1  
MR KT DAVE, AGP for Respondent No. 2
- 

CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 04/10/2002

ORAL JUDGEMENT

The petitioner i.e. Mr. V.D.Jani, who was

appointed as a Junior Clerk (Clerical Cadre) in the Office of District Panchayat, Kutch, on November 1, 1966 and promoted as a Senior Clerk in 1982, has filed present petition under Article 226 of the Constitution, and prayed to quash and set aside seniority list dated August 8, 1988, finalized by the respondents, in which his name is mentioned in the Accounts Cadre of the respondent no.1 at serial no. 41, though he had never worked in the Accounts Cadre, nor had opted for the same. The petitioner has further prayed to direct the respondent no.1-Panchayat to allot the petitioner to the common Clerical Cadre and assign him seniority in that cadre at appropriate place considering the date of his initial appointment as Junior Clerk. The petitioner has also prayed to direct the respondents to give him all consequential benefits i.e. promotion in the higher post in Clerical Cadre with retrospective effect from March 26, 1992, or such other date on which his junior in the Clerical Cadre was promoted, and pay him difference of salary, fixation of pay and all other consequential benefits.

2. In paragraph 13 of the petition it was mentioned by the petitioner that on the date of filing of the petition he was working in Clerical Cadre and, therefore, it was necessary to restrain the District Panchayat from implementing seniority list finalized on August 8, 1988. The Court while entertaining the petition had directed the parties to maintain status-quo.

3. During the course of hearing of the petition, Mr. H.S.Munshaw, learned counsel for the respondent No.1, has stated at the Bar that the petitioner retired from service on September 30, 2000 while serving on the post of Senior Clerk (Clerical Cadre) and though he was allocated to Accounts Cadre, he was continued in Clerical Cadre due to the Court proceedings. In view of this subsequent event, I am of the opinion that the prayer made by the petitioner to set aside and quash the final seniority list of Clerks working in Accounts Cadre prepared on August 8, 1988, has become infructuous and need not be considered by the Court on merits.

4. The learned counsel for the respondent no.1, on instructions, has further stated at the Bar that when the petitioner retired from the post of Senior Clerk (Clerical Cadre) he was placed in the pay-scale of Rs. 4000-6000, and is being paid pension on that basis regularly. It is also stated at the Bar that the petitioner has already been paid gratuity, commutation of pension and other benefits. However, there is no manner

of doubt that if the petitioner had been treated as belonging to Clerical Cadre, his case would have been considered for higher pay-scale of Rs. 5000-8000 and that the same has not been considered by the respondent no.1 due to pendency of the present petition. Under the circumstances, I am of the opinion that interest of justice would be served if the petitioner is directed to make a representation to respondent no.1 for giving him benefit of higher pay-scale of Rs.5000-8000, and the respondent no.1 is directed to consider the same within the time to be stipulated in this order.

5. For the foregoing reasons, the petition partly succeeds. Prayers made in Paragraph Nos. 16(B) & 16(C) are refused as having become infructuous. So far as prayer made in Paragraph No.16(D) is concerned, the petitioner is directed to make a representation to District Development Officer, District Panchayat, Kutch at Bhuj for claiming benefit of higher pay-scale of Rs. 5000-8000 within three weeks from today. The District Development Officer, District Panchayat, Kutch at Bhuj, is directed to consider the same in accordance with law, as early as possible and preferably within three months from the date of receipt of the representation. Rule is made absolute accordingly, with no order as to costs.

(J.M.Panchal,J.)

(patel)